

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
KRISTIN K. MAYES

7 In the matter of:)

8 Brixon Group Ltd.)
1616 East Main, Suite 128)
Mesa, Arizona 85203)

DOCKET NO. S-20402A-05-0569

9 Joseph Wayne McCool a.k.a. Joe McCool)
10 and Jane Doe McCool, husband and wife)
5306 East Boise Street or 5304 East Boise)
11 Street)
Mesa, Arizona 85205)

DECISION NO. 68270

12 Donald John Manning a.k.a. Don Manning)
13 and Jane Doe Manning, husband and wife)
8260 East Keates Avenue, #502)
14 Mesa, Arizona 85208)

**ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION, AND ORDER FOR
ADMINISTRATIVE PENALTIES**

**RE: RESPONDENTS BRIXON GROUP LTD.,
JOSEPH WAYNE MCCOOL AND DONALD
JOHN MANNING**

15 Cameron Guy Campbell and Nanette)
16 Campbell, husband and wife)
2375 Terraza Salvo)
17 Carlsbad, California 92009-6623)

18 Respondents.)
19)

20 **I.**

21 **PROCEDURAL POSTURE**

22 On August 9, 2005, the Securities Division ("Division") of the Arizona Corporation
23 Commission ("Commission") filed a Notice of Opportunity for Hearing regarding Proposed Order
24 to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and for other
25 affirmative action against Brixon Group Ltd., Joseph Wayne McCool, Donald John Manning
26 ("RESPONDENTS"), Cameron Guy Campbell, and Nanette Campbell alleging violations of
Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

1 The Notice of Opportunity for Hearing specified that Brixon Group Ltd., Joseph Wayne
2 McCool, and Donald John Manning would be afforded an opportunity for an administrative
3 hearing upon a written request filed with the Commission's Docket Control within ten (10) days
4 after receipt of the Notice, in accordance with A.A.C. R14-4-306(B).

5 The Division has made numerous efforts to locate and directly serve RESPONDENTS.
6 Specific efforts to locate and serve each of these RESPONDENTS are enumerated in Affidavits in
7 Support of Publication, previously filed in this case. Upon information and belief, none of the
8 RESPONDENTS are represented by counsel.

9 Pursuant to A.C.C. R-14-4-303(H)(2)(a), the Division has published a statement regarding
10 the administrative proceedings at least once a week for four consecutive weeks in the *Arizona*
11 *Business Gazette* on September 1, 8, 15, and 22, 2005. The *Arizona Business Gazette* is published
12 in Maricopa County, which is the county of each of the RESPONDENTS' last known residence or
13 place of business. A certified copy of the notarized publication has previously been filed in this
14 case.

15 Pursuant to A.C.C. R-14-4-303(H)(3) service of process of the Notice of Opportunity for
16 Hearing as to each RESPONDENT is complete. Each RESPONDENT failed to request an
17 administrative hearing within ten (10) days after receipt of the Notice.

18 19 II.

20 FINDINGS OF FACT

21 1. RESPONDENTS were doing business at 1616 East Main St, Suites 128 and 206, Mesa,
22 Arizona 85203.

23 2. RESPONDENTS are not registered as securities salesmen or dealers in Arizona.

24 3. RESPONDENTS sold securities in the form of investment contracts, which were called
25 Capital Private Placement Agreements, within or from Arizona.

1 4. The Capital Private Placement Agreements offered for sale by the RESPONDENTS were
2 not registered in Arizona nor were they exempted from registration.

3 5. RESPONDENTS provided Capital Private Placement Agreements at the time of sale to
4 investors.

5 6. RESPONDENTS assured Capital Private Placement investors that their principal was
6 secure because it was insured; and that each investor would be provided an insurance policy.

7 7. The Capital Private Placement Agreement provided that investors agree to place their
8 invested “*sums into the investment coordinator’s control and management,*” pursuant to a power of
9 attorney. The investors expected to earn a profit solely through the efforts of the investment
10 coordinator or some one other than themselves.

11 8. The Capital Private Placement Agreements state that investor funds are to be privately
12 placed in high-yield insurance portfolio investments with a promised “*return on investment profits*
13 *equal to 10% per month.*” RESPONDENTS did not put investor funds into high-yield insurance
14 portfolio investments.

15 9. RESPONDENTS used investor funds for personal expenses, for office expenses and
16 salaries, for attorney fees, and for other undesignated distributions and failed to disclose to
17 investors.

18 10. From on or about January, 2000, until on or about February, 2002, some Capital Private
19 Placement investors received monthly interest payments.

20 11. RESPONDENTS solicited investors to roll their 401K or IRA accounts into self-directed
21 accounts at Resource Trust Corporation.

22 12. RESPONDENTS promised investors a 5% monthly return on investment on the accounts at
23 Resource Trust Corporation and promised that the principal in the accounts would be secured by an
24 insurance policy.

1 13. RESPONDENTS withdrew the principal from the Resource Trust Corporation accounts,
2 pursuant to a power of attorney, to be invested in a Brixon Group partnership. Investors lost their
3 principal; were not insured; and did not receive return-on-investment payments.

4 14. RESPONDENTS had 128 investors, from Arizona and other states, and \$8,536,495 dollars
5 invested in their Capital Private Placement fund.

6 15. BRIXON GROUP LTD. is incorporated in the Caribbean Turks and Caicos Islands.

7 16. At all relevant times, JOSEPH WAYNE MCCOOL held himself out to investors as an
8 officer of Brixon Group Ltd

9 17. From on or about January, 2000, JOSEPH WAYNE MCCOOL offered and sold Brixon
10 Group Ltd.'s Capital Private Placement fund to investors.

11 18. JOSEPH WAYNE MCCOOL was convicted of Conspiracy to Commit Wire Fraud and
12 Conspiracy to Traffic in Counterfeit Goods in case number #CR00046-001, United States District
13 Court, Eastern District of Virginia in 1997.

14 19. JOSEPH WAYNE MCCOOL was imprisoned in case number #CR00046-001 from on or
15 about August 18, 1997 to March 1, 2000.

16 20. JOSEPH WAYNE MCCOOL was on supervised probation as a result of his conviction in
17 case number #CR00046-001 from on or about March, 2000, to April, 2003.

18 21. JOSEPH WAYNE MCCOOL did not disclose to Capital Private Placement investors his
19 prior criminal history.

20 22. JOSEPH WAYNE MCCOOL represented to the U.S. Probation Office that Donald John
21 Manning, a.k.a Don Manning, was his immediate supervisor; that Don Manning was aware of his
22 criminal status; that he was employed by Brixon Group Ltd. as a salesperson at a gross income of
23 \$3000.00 per month; and that he had been employed by Brixon Group Ltd. since January, 2000.

24 23. At all relevant times, DONALD JOHN MANNING held himself out to investors as an
25 officer of Brixon Group Ltd.
26

1 24. From on or about January, 2000, DONALD JOHN MANNING offered and sold Brixon
2 Group Ltd.'s Capital Private Placement fund to investors.

3 25. DONALD JOHN MANNING did not disclose to Capital Private Placement investors Joseph
4 Wayne McCool's prior criminal history.

5 26. DONALD JOHN MANNING'S former address was 5304 E. Boise St. Mesa, AZ 85205-
6 8122 from on or about March 1, 2000 until May 2, 2001.

7 27. Funds from Capital Private Funds from Capital Private Placement investors were deposited
8 (wire transfer or check) into an account at Northern Trust Bank.

9 28. Funds were disbursed from the bank account at Northern Trust Bank at the direction of
10 JOSEPH WAYNE MCCOOL or DONALD JOHN MANNING.

11 29. Funds were transferred from an account at Northern Trust Bank to other United States and
12 foreign bank accounts, to officers of Brixon Group Ltd., to investors, and to other non-investor
13 companies and individuals for their own use.

14 30. At all relevant times JANE DOE MANNING was the spouse of DONALD JOHN
15 MANNING. JANE DOE MANNING is joined in this action under ARS §44-2031(C) for the
16 purpose of determining the liability of the marital community.

17 31. At all relevant times JANE DOE MCCOOL was the spouse of JOSEPH WAYNE
18 MCCOOL. JANE DOE MCCOOL is joined in this action under ARS §44-2031(C) for the purpose
19 of determining the liability of the marital community.

20 21 **III.**

22 **CONCLUSIONS OF LAW**

23 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
24 Arizona Constitution and the Securities Act

25 2. RESPONDENTS offered or sold securities within or from Arizona, within the
26 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

1 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that
2 were neither registered nor exempt from registration.

3 4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
4 neither registered as a dealer or salesman nor exempt from registration.

5 5. RESPONDENTS violated A.R.S. § 44-1991 by (a) employing a device, scheme or
6 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
7 engaging in transactions, practices or courses of business which operate or would operate as a
8 fraud or deceit.

9 6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to
10 A.R.S. § 44-2032.

11 7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S.
12 § 44-2032.

13 8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. §
14 44-2036.

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16 **IV.**

17 **ORDER**

18 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, the Commission
19 finds that the following relief is appropriate, in the public interest, and necessary for the protection
20 of investors:

21 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, and any of
22 RESPONDENTS' agents, employees, successors and assigns, permanently cease and desist from
23 violating the Securities Act. RESPONDENTS shall not sell any securities in or from Arizona
24 without being registered in Arizona as dealers or salesmen, or exempt from such registration.
25 RESPONDENTS shall not sell securities in or from Arizona unless the securities are registered in
26 Arizona or exempt from registration.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall,
2 jointly and severally with other RESPONDENTS in this case against whom an Order is issued, pay
3 restitution to investors shown on the records of the Commission in the amount of \$8,536,445.00,
4 less the amount of any disbursements received by investors, plus interest at the rate of 10% per
5 annum from the date of this Order. Restitution is due and payable on the date of the Order.
6 Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be
7 placed in an interest-bearing account maintained and controlled by the Commission. The
8 Commission shall disburse the funds on a pro rata basis to investors. Any funds that the
9 Commission is unable to disburse shall be transferred to the general fund of the state of Arizona.

10 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENT shall pay
11 an administrative penalty in the amount of \$250,000. Payment shall be made in full by cashier's
12 check or money order on the date of this Order, payable to the "State of Arizona." The payment
13 obligations for these administrative penalties shall be subordinate to any restitution obligations
14 ordered herein and shall become immediately due and payable only after restitution payments have
15 been paid in full, or if RESPONDENTS have defaulted prior to fulfilling RESPONDENTS'
16 restitution obligations. For the purposes of this Order, a bankruptcy filing by any
17 RESPONDENTS shall be an act of default on RESPONDENTS' restitution obligations. If
18 RESPONDENTS do not comply with this order for administrative penalties, any outstanding
19 balance may be deemed in default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if any RESPONDENT fails to comply with this order,
2 the Commission may bring further legal proceedings against that RESPONDENT, including
3 application to the superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7 /s/ Jeffrey M. Hatch-Miller

8 CHAIRMAN

/s/ William Mundell

COMMISSIONER

9
10 /s/ Marc Spitzer

COMMISSIONER

/s/ Lowell Gleason

COMMISSIONER

/s/ Kristin K. Mayes

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
13 Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this 8th day of
17 November, 2005.

18 /s/ Brian C. McNeil

BRIAN C. McNEIL

Executive Director

19
20 _____
21 DISSENT

22
23 _____
24 DISSENT

25 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant
26 to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@azcc.gov.

(EGJ)